



MERCHANT &amp; GOULD P.C.

United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY

#4

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: **MUTANTS OF STREPTOCOCCAL TOXIN C AND METHODS OF USE**

The specification of which

- a. ☐ is attached hereto  
b. ☒ is entitled **MUTANTS OF STREPTOCOCCAL TOXIN C AND METHODS OF USE** having an attorney docket number of 600.347US11.  
c. ☒ was filed on June 18, 1999 as application serial no. 09/336,036 and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. ☐ no such applications have been filed.  
b. ☒ such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
PCT	PCT/US97/22125	5-DECEMBER-1997	
ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)
/	25-MAY-1999	PENDING

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)
60/091,864	06-JULY-1998
60/033,251	06-DECEMBER-1996

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Albrecht, John W.	Reg. No. 40,481	Lacy, Paul E.	Reg. No. 38,946
Anderson, Gregg I.	Reg. No. 28,828	Larson, James A.	Reg. No. 40,443
Ansems, Gregory M.	Reg. No. 42,264	Lasky, Michael B.	Reg. No. 29,555
Batzli, Brian H.	Reg. No. 32,960	Liepa, Mara E.	Reg. No. 40,066
Beard, John L.	Reg. No. 27,612	Lindquist, Timothy A.	Reg. No. 40,701
Black, Bruce E.	Reg. No. 41,622	Lynch, David W.	Reg. No. 36,204
Blasdell, Thomas L.	Reg. No. 31,329	Marschang, Diane L.	Reg. No. 35,600
Bogucki, Raymond A.	Reg. No. 17,426	McDaniel, Karen D.	Reg. No. 37,674
Bruess, Steven C.	Reg. No. 34,130	McDonald, Daniel W.	Reg. No. 32,044
Byrne, Linda M.	Reg. No. 32,404	McIntyre, Iain A.	Reg. No. 40,337
Carlson, Alan G.	Reg. No. 25,959	Mueller, Douglas P.	Reg. No. 30,300
Caspers, Philip P.	Reg. No. 33,227	Nelson, Albin J.	Reg. No. 28,650
Chiapetta, James R.	Reg. No. 39,634	Pauly, Daniel M.	Reg. No. 40,123
Clifford, John A.	Reg. No. 30,247	Phillips, John B.	Reg. No. 37,206
Cochran, William W.	Reg. No. 26,652	Plunkett, Theodore	Reg. No. 37,209
Daignault, Ronald A.	Reg. No. 25,968	Pytel, Melissa J.	Reg. No. 41,512
Daley, Dennis R.	Reg. No. 34,994	Reich, John C.	Reg. No. 37,703
Dalglish, Leslie E.	Reg. No. 40,579	Reiland, Earl D.	Reg. No. 25,767
Daulton, Julie R.	Reg. No. 36,414	Rittmaster, Ted R.	Reg. No. 32,933
DeVries Smith, Katherine M.	Reg. No. 42,157	Schmaltz, David G.	Reg. No. 39,828
DiPietro, Mark J.	Reg. No. 28,707	Schuman, Mark D.	Reg. No. 31,197
Edell, Robert T.	Reg. No. 20,187	Schumann, Michael D.	Reg. No. 30,422
Epp Ryan, Sandra	Reg. No. 39,667	Scull, Timothy B.	Reg. No. 42,137
Funk, Steven R.	Reg. No. 37,830	Sebald, Gregory A.	Reg. No. 33,280
Glance, Robert J.	Reg. No. 40,620	Skoog, Mark T.	Reg. No. 40,178
Golla, Charles E.	Reg. No. 26,896	Soderberg, Richard	Reg. No. P-43,352
Gorman, Alan G.	Reg. No. 38,472	Sumner, John P.	Reg. No. 29,114
Gould, John D.	Reg. No. 18,223	Sumners, John S.	Reg. No. 24,216
Gregson, Richard	Reg. No. 41,804	Tellekson, David K.	Reg. No. 32,314
Gresens, John J.	Reg. No. 33,112	Trembath, Jon R.	Reg. No. 38,344
Hamre, Curtis B.	Reg. No. 29,165	Underhill, Albert L.	Reg. No. 27,403
Hillson, Randall A.	Reg. No. 31,838	Vandenburgh, J. Derek	Reg. No. 32,179
Holzer, Jr., Richard J.	Reg. No. 42,668	Vradenburgh, Anna M.	Reg. No. 39,868
Johnston, Scott W.	Reg. No. 39,721	Welter, Paul A.	Reg. No. 20,890
Kadievitch, Natalie D.	Reg. No. 34,196	Whipps, Brian	Reg. No. 43,261
Kastelic, Joseph M.	Reg. No. 37,160	Wickhem, J. Scot	Reg. No. 41,376
Kettelberger, Denise	Reg. No. 33,924	Williams, Douglas J.	Reg. No. 27,054
Knearl, Homer L.	Reg. No. 21,197	Witt, Jonelle	Reg. No. 41,980
Kowalchyk, Alan W.	Reg. No. 31,535	Wood, William J.	Reg. No. 42,236
Kowalchyk, Katherine M.	Reg. No. 36,848	Xu, Min S.	Reg. No. 39,536
Kubota, Glenn M.	Reg. No. 44,197		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant & Gould P.C. to the contrary.

Please direct all correspondence in this case to Merchant & Gould P.C. at the address indicated below:

Merchant & Gould P.C.  
3100 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402-4131

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name SCHLIEVERT	First Given Name PATRICK	Second Given Name M.
0	Residence & Citizenship	City EDINA	State or Foreign Country MINNESOTA	Country of Citizenship USA
1	Post Office Address	Post Office Address 5305 BIRCHCREST DRIVE	City EDINA	State & Zip Code/Country MINNESOTA 55436/USA
Signature of Inventor 201: <i>Patrick M. Schlievert</i>			Date: 1/12/00	
2	Full Name Of Inventor	Family Name OHLENDORF	First Given Name DOUGLAS	Second Given Name
0	Residence & Citizenship	City EDEN PRAIRIE	State or Foreign Country MINNESOTA	Country of Citizenship USA
2	Post Office Address	Post Office Address 9397 OLYMPIA DRIVE	City EDEN PRAIRIE	State & Zip Code/Country MINNESOTA 55347/USA
Signature of Inventor 202: <i>Doug Ohendorf</i>			Date: 1/13/00	
2	Full Name Of Inventor	Family Name MITCHELL	First Given Name DAVID	Second Given Name T.
0	Residence & Citizenship	City <i>St. Cloud</i> VADNAIS HEIGHTS	State or Foreign Country MINNESOTA	Country of Citizenship USA
3	Post Office Address	Post Office Address <i>2517 Clearwater Rd #305</i> 4217 CENTERVILLE ROAD	City <i>St. Cloud</i> VADNAIS HEIGHTS	State & Zip Code/Country MINNESOTA 55127/USA 56301
Signature of Inventor 203: <i>David Mitchell</i>			Date: 1/13/00	
2	Full Name Of Inventor	Family Name GAHR	First Given Name PAM A	Second Given Name M
0	Residence & Citizenship	City <i>WOODBURY ST. PAUL</i>	State or Foreign Country MINNESOTA	Country of Citizenship USA
4	Post Office Address	Post Office Address <i>2085</i> 2728 HORSESHOE LANE • LINCOLN AVE	City <i>ST. PAUL</i> WOODBURY	State & Zip Code/Country MINNESOTA 55106/USA 55105
Signature of Inventor 204: <i>Pamela M. Gahr</i>			Date: 1/14/00	

## § 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
- or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.